

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRAD GARDNER, AN INDIVIDUAL,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE LEE
A. GATES, DISTRICT JUDGE,
Respondents,
and
WILMA JACOBS, AN INDIVIDUAL,
Real Party in Interest.

No. 51845

FILED

AUG 14 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION

This is an original petition for a writ of mandamus or prohibition challenging a district court order granting a motion for reconsideration, which reinstated real party in interest's claims in a real property action.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station,¹ or to control a manifest abuse of discretion.² Its counterpart, a writ of prohibition, is available to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction.³ Both mandamus and prohibition are

¹See NRS 34.160.

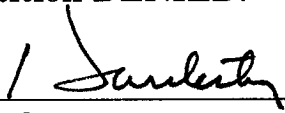
²See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

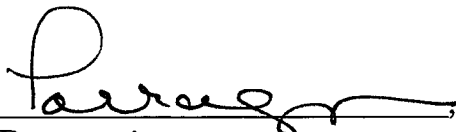
³See NRS 34.320.

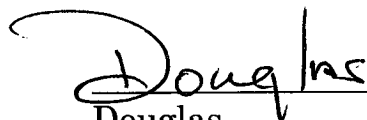
extraordinary remedies, and it is within our discretion to determine if a petition will be considered.⁴ Generally, writs of mandamus and prohibition are available only where no plain, speedy, and adequate remedy exists in the ordinary course of law.⁵ We have repeatedly held that an appeal is generally an adequate legal remedy that precludes the availability of writ relief.⁶

Here, petitioner may challenge the order granting the motion for reconsideration in the context of an appeal from the final judgment.⁷ Indeed, the district court apparently recently entered a judgment upon a jury verdict in this case. Because petitioner, if aggrieved, has a plain, speedy, and adequate legal remedy available in the form of an appeal from the final judgment, we conclude that our intervention by way of extraordinary relief is not warranted.⁸ Accordingly, we

ORDER the petition DENIED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁴See Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

⁵NRS 34.170; NRS 34.330.

⁶Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

⁷Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998).

⁸See NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

cc: Hon. Lee A. Gates, District Judge
Simon & Berman
Amesbury & Schutt
Eighth District Court Clerk